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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,305	09/30/2003	Alan J. Duyst	25316	8174

28624 7590 09/26/2006

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EXAMINER
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MAI, TRI M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/676,305

Applicant(s)

DUYST, ALAN J.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

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1. Claims 1-3, 5, and 6-8 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Brian (4574996) or Metzger (2785844) in view of either Means et al. (2138112) or Jenkins et al. (345510). Brian teaches a foldable material having first side panels 10, second side panel 14, outer bottom panels 42, inner bottom panels 22, first divider panel 56+50 connected to the outer bottom panels 42, second divider panels 26 connected to the inner bottom panel 22, and a divider slot 30 formed in the inner bottom panel 22 and the second divider panel 26. With respect to the slot being at least twice the thickness of the first divider panel, slots 30 are at least twice the thickness of the divider panel so that it can accommodate panels 22, 26, 24, 28. Metzger teaches similar container as shown in Fig. 4.

It is noted that the term "lift cutout" is broad. Means teaches that it is known in the art to provide cut outs at the top edges of the opening (at portion 11, 27, 17, 9) and at the divider one the two sides of protrusions 52 and 53. Jenkins et al. also teaches that it is known in the art to provide cut outs at the top edges of the opening and the dividers. It would have been obvious to one of ordinary skill in the art to provide the cutouts in as taught by either Means or Jenkins to enable venting and or to provide the desired covering structure for the container.

Furthermore, the venting holes in Means can also be called the lift cutouts as claimed. Thus, to provide the venting holes one the sidewalls and divider of Brian and Metzger as taught by Means would have been obvious.

Note that the term "lift cutout" does not impart any structure over either the holes or the cutouts on the top in Means, nor the term impart any structure over the notches on the top opening of Jenkins. To provide the opening with cutouts similar to that of Jenkins in either Brian

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or Metzger would have been obvious since this type of opening facilitate venting as disclosed by Jenkins.

Note the corrugate teaching in Brian.

2. Claims 3, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Brian or Metzger rejections, as set forth above, and further in view of Bruce (3547339). To the degree it is argued that the combinations of Brian or Metzger fails to teach the specificities of the corrugated material. It would have been obvious to one of ordinary skill in the art to make the container from one layer corrugated material to provide the desired material for strength and/or integrity.

3. Applicant's arguments have been fully considered but they are not persuasive. Applicant asserts that the combination of Brian or Metzger in view of either Means or Jenkins are not obvious. The examiner disagrees. It is noted that the term "lift cutout" is broad. Means teaches that it is known in the art to provide cut outs at the top edges of the opening (at portion 11, 27, 17, 9) and at the divider adjacent the two side of protrusions 52 and 53. Means teaches that it is known in the art to provide cut outs at the top edges of the opening. Jenkins et al. also teaches that it is known in the art to provide cut outs at the top edges of the opening and the dividers. It would have been obvious to one of ordinary skill in the art to provide the cutouts in as taught by either Means or Jenkins to enable venting and or to provide the desired covering structure for the container.

Furthermore, the venting holes can also be called the lift cutouts as claimed. Thus, to provide the cutouts by venting holes as taught by Means would have been obvious. Furthermore, the term "lift cutout" does not impart any structure over either the holes or the cutouts on the top

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openings nor the term impart any structure over the notches on the top opening of Jenkins. To provide this type of opening in either Brian or Metzger would have been obvious since this type of opening facilitate venting as disclosed by Jenkins.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai  
Primary Examiner  
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